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Abbreviations Used in This Report

DOE	U.S. Department of Energy
EAPRO	Employee Assistance Program Referral
	Option
NN	DOE Office of Nonproliferation and
	National Security
NN-51	DOE Office of Safeguards and Security
PAP	Personnel Assurance Program
PSAP	Personnel Security Assurance Program

Introduction

BACKGROUND

In July 1993 the Department of Energy (DOE) Office of Safeguards and Security (NN-51) issued a policy interpretation memorandum¹ establishing the Employee Assistance Program Referral Option (EAPRO). The EAPRO effectively served to modify the Department's adjudicative guidelines for the evaluation of information of security concern related to alcohol and drug abuse (Sections 710.11[j] and [k] of Title 10, Code of Federal Regulations [10 CFR 710], Subpart A). Prior to this memorandum, longstanding policy had allowed favorable resolution of derogatory information involving substance abuse only by adequate evidence of rehabilitation and reformation, such evidence being defined as substantiated or documented information that an individual had not used alcohol habitually to excess or abused drugs (legal or illegal) for an interval of 12 months. Lacking such evidence of reformation and rehabilitation, access authorizations were denied or suspended, and the cases were processed under the administrative review procedures established by 10 CFR 710, Subpart A. In some cases, by the time of the administrative review hearing, the individual was able to provide the required evidence of reformation and rehabilitation, and the access authorization was reinstated.

> The Employee Assistance Program Referral Option (EAPRO) allows substance abusers to retain their access authorizations while working toward rehabilitation.

EAPRO was established to:

- Reduce the administrative review caseload
- Provide a second chance to individuals who had stopped their substance abuse and sought treatment to overcome their substance abuse problems
- Encourage substance abusers to seek help without fear of losing their access authorization
- Encourage substance abusers to seek help without fear of losing their employment.

Consequently, EAPRO allowed, but did not require, DOE to offer such individuals the opportunity to retain their access authorization while continuing and completing the course of treatment leading to reformation and rehabilitation. The individual's obligation in return was to continue to abstain from substance abuse and to voluntarily and successfully participate in an approved and monitored rehabilitation program. The EAPRO guidance applied only to the individual's retention of a DOE access authorization and clearly stated that the individual's ability to continue in special designated program positions would be governed by the requirements of the particular program. Further guidance issued in December 1993 allowed EAPRO to be offered to individuals who had previously signed DOE drug certifications, and to applicants for access authorizations.

> There are security concerns about EAPRO implementation, especially as it relates to employees performing sensitive duties.

During an October 1994 security inspection of a field element, the Office of Security Evaluations identified several security issues regarding the Department's EAPRO policy. The most immediate of the identified concerns was that substance abusers who were offered and had accepted the opportunity to participate in the EAPRO were also allowed to concurrently perform sensitive duties, such as duties associated with the Personnel Security Assurance Program (PSAP) and carrying firearms. Security Evaluations noted that such a practice was inconsistent with the regulation governing eligibility to perform PSAP duties (10 CFR 710, Subpart B) and with recognized security and safety practices. Specifically, Security Evaluations' concern was that

Memorandum from Edward J. McCallum, "Policy Interpretation: Employee Assistance Program Referral Option for Personnel Security Cases Involving Substance Abuse," with attachments, dated July 2, 1993.

individuals with unresolved substance abuse problems, even though participating in treatment programs, should not be allowed to perform such sensitive duties until the course of treatment had resulted in a verified state of remission, reformation, and rehabilitation.

A second concern was the validity or appropriateness of the EAPRO itself, due to the method by which it had been established. The EAPRO was established by memorandum, yet it effectively negated the requirement in 10 CFR 710, Subpart A, that derogatory information be satisfactorily resolved in order to grant or continue an access authorization. The propriety of, in effect, circumventing the requirements of a regulation by memorandum was questioned.

The Headquarters Office of Safeguards and Security and Office of General Counsel have taken little action to address these concerns.

Ancillary issues of increased risk and liability were also raised; these included the arming of individuals undergoing substance abuse treatment and the handling of conflicting medical opinions in the decision process leading to an offer of EAPRO. NN-51 did not concur with Security Evaluations' concerns, concluding that the practices were consistent with DOE policy. Security Evaluations then referred these issues to NN-1 for consideration and, in December 1994, to the Office of General Counsel for legal opinions on several aspects of the issue, including those dealing with the circumvention of a regulation by memorandum, the proper and required application of 10 CFR 710, Subpart B, and the Department's vulnerability to assumption of increased liability from the observed practices.

To date, the Office of Nonproliferation and National Security (NN) has taken no action to change the implementation of the EAPRO program or further address the concerns raised by Security Evaluations. Similarly, the Office of General Counsel has not issued the requested opinions or otherwise provided a formal response to Security Evaluations' request.

PURPOSE

The Director, Office of Security Evaluations (EH-21) performed this special study to determine whether the implementation of the EAPRO within the Department, and particularly the practices involving personnel performing sensitive duties, has resulted in an unintentional or unrecognized increase in the potential threat to the Department's security interests.

The purpose of this study was to determine whether EAPRO implementation has increased the potential threat to the Department's security interests.

To achieve this purpose, the special study set out to:

- 1. Determine the current number of personnel participating in EAPRO while continuing to perform sensitive duties.
- 2. Determine the consistency of EAPRO implementation across the Department.
- 3. Determine how the EAPRO program has been administered by NN-51 since its inception, including program guidance, supervision and review, and reporting processes.
- 4. Identify potential enhancements, when appropriate, to address any problems identified during the study.

METHODOLOGY

The study involved the collection and analysis of specific data pertaining to the implementation of the EAPRO and the Department's experience with

For the purposes of this study, sensitive duties include those associated with Personnel Assurance Program and Personnel Security Assurance Program duties, as well as the carrying of firearms. It should be recognized, however, that substance abuse may be cause for concern when associated with other duties as well, such as operating machinery or motor vehicles, working with hazardous materials, and working with particularly sensitive classified information.

the program since its inception. Data collection involved the solicitation of information from the Headquarters and field elements (except organizations operating under the cognizance of the Office of Naval Reactors) directly involved in any way with the establishment or implementation of the EAPRO, or in addressing the issues raised by Security Evaluations in 1994. The organizations from which data were solicited or collected are identified on the inside back cover of this report.

Surveys and interviews were conducted with Headquarters and field organizations.

A written survey was developed and used as the study's primary data collection vehicle. The survey solicited statistical data, information regarding program implementation decisions and procedures, program experiences, and any other information deemed pertinent by the respondents. A copy of the survey is provided at the end of this report.

Following receipt of the completed surveys, followup telephone calls were made to each surveyed organization. This followup was conducted to verify, clarify, and expand information provided in the surveys, and to gather additional information not requested by the original survey but prompted by responses to the survey.

Personal interviews were conducted with selected Headquarters officials to gain an understanding of the program's impetus, background, promulgation, and administration.

All information provided by respondents was accepted as accurate. While some information that raised questions was confirmed or corrected during followup, no case files were reviewed, nor was the validity of the information provided independently verified.

Results

Information collected during this special study is provided below in summary form, organized into three categories: current program size; program administration by NN-51; and program implementation throughout the Department.

Nine individuals performing sensitive duties are participating in the EAPRO.

Current Program Size

Department-wide enrollment figures for the EAPRO at the time of the survey (February 1997) are as follows:

- · Total current EAPRO enrollment: 78
- Total current EAPRO participants also performing sensitive duties: 9. All are performing PSAP duties, are armed, or both. None are performing Personnel Assurance Program (PAP) duties.

Headquarters Program Administration

Headquarters has not monitored or reviewed the program regularly since its inception in 1993, though a policy review is now under way.

NN-51 is the Headquarters element responsible for administering the EAPRO.

Formal program guidance consists of the July 2, 1993, memorandum establishing the program and a December 1993 memorandum

authorizing participation by individuals with existing drug certifications. The latter memorandum also authorized (erroneously, according to NN-51) program participation by access authorization applicants. NN-51 indicates that it intends to correct that error; no time frame was provided.

NN-51 has not monitored, supervised, reviewed, or evaluated the program since its inception in July 1993, nor has NN-51 modified the program since December 1993. NN-51 has recognized a need to review the program's status, and within the past six months has initiated a policy review that to date has consisted of obtaining and reviewing program implementation plans developed by field elements. The review is intended to identify needed program changes.

NN-51 has also provided specific additional program guidance to individual field elements, upon request, on a case-by-case basis.

No programmatic reporting requirements have been established in connection with the EAPRO. Headquarters does not require, and does not receive, reports of any information associated with the program. Neither historical nor current program data are available at Headquarters.

The field generally considers the program guidance provided by Headquarters to be reasonable and adequate, except as it applies to drug abuse cases. A desire for more specific guidance in drug cases is indicated.

Program Implementation

There is little consistency in how substance abusers are identified, treated, monitored, or evaluated for return to or continuation of sensitive duties.

Ten Departmental organizations (Headquarters and nine field elements) have implemented EAPRO since its authorization in July 1993: six during 1993; two during 1994; one during 1995; and one is nearing implementation in February 1997.

Generally, the Department is not paying strict heed to that portion of the guidance that allows EAPRO to be offered only to individuals who have already stopped their substance abuse and have already begun a reformation/rehabilitation effort. The program guidance establishes this as a threshold

requirement for being offered EAPRO. Current practice seems to accept any period of claimed abstinence as sufficient to merit the offer of EAPRO participation. For example, individuals are offered EAPRO if they indicate they have stopped drinking after their most recent arrest for driving under the influence, or between their interview with a personnel security analyst and their selection of a rehabilitation treatment provider.

Most organizations indicate that they give more intense or special consideration before offering EAPRO to individuals performing sensitive duties. However, none have developed any specific criteria or methods for doing so.

Generally, when EAPRO is offered to an individual, no one (e.g., supervisors, managers) outside the personnel security organization is informed of the event unless the offeree is performing PSAP duties, in which case PSAP officials are usually notified.

To date, no individual has been allowed to participate concurrently in EAPRO and PAP. Interviews with field and Headquarters personnel indicate a consensus position that there would be great hesitancy in allowing an individual to do so. (The survey and interviews indicated that there have not been any substance abuse cases involving personnel in the PAP.)

There are wide variations in practices regarding allowing concurrent participation in EAPRO and PSAP. Generally, EAPRO participants are allowed to resume PSAP duties after participation in EAPRO for periods ranging from two months to two years (the latter extreme essentially being after reformation and rehabilitation is established, as called for in 10 CFR 710, Subpart B). Practices also vary regarding whether and how long a normally armed individual (e.g., Security Police Officer, courier) may be disarmed while undergoing treatment.

EAPRO implementation does not appear to have encouraged substance abusers to openly seek help, nor has it promoted workers' reporting of coworkers' substance abuse.

Individuals do not usually come forward and openly declare their substance abuse problems. Their

substance abuse is generally revealed by arrests or the results of background investigations. DOE channels established for identifying substance abusers (e.g., reports of aberrant behavior through PSAP's continuous observation procedure, or from cleared coworkers) have not been effective.

While respondents agreed that the program must balance the "human" benefits of the program with the potential security risks, the "human" benefits of the program seem to receive more weight and attention than the added risks; for example, while respondents freely identified the "human" benefits of the program, they generally acknowledged and discussed risk as part of the equation only after prodding.

To date, EAPRO has been offered only to individuals with alcohol abuse problems. No one has been offered EAPRO for drug abuse, although some organizations indicate they would do so if an appropriate case arose.

Substance abuse testing procedures conducted by treatment providers are not consistent. Most require monthly random testing. Some use urinalysis, others use breath alcohol testing. Neither of these methods is effective in detecting alcohol much beyond six to eight hours after consumption.

Program information is rarely maintained or monitored.

Reports received by DOE from treatment providers, which are intended to allow DOE to monitor program progress (as is required), vary in substance and level of detail. Many provide very sparse information, in some cases indicating only that an individual kept his/her appointment(s) and passed a monthly drug/alcohol screening test. In one case, an organization waived the requirement for monthly reports of satisfactory progress, and requires reports only when an event occurs that indicates unsatisfactory progress.

Generally, program statistics are not being collected. Managers are not aware of the size or performance of the programs, or the progress of the participants. When any statistics are kept at all, they are normally limited to the personnel security organization. No statistics are reported to Headquarters.

Conclusions

Implementation of the EAPRO program clearly involves some potential for increased risk; that fact is acknowledged and accepted by managers. That risk may be increased by program implementation inconsistencies and the almost universal practice of ignoring the threshold program entrance requirement: that substance abuse already be stopped and a rehabilitation/reformation effort begun. However, to date, the Department has otherwise shown reasonable restraint in its use of the program, as evidenced by the relatively small number of participants and the effective exclusion of drug abusers. Consequently, any increased risk to DOE security interests accruing from the EAPRO program is likely to be low if all elements are working properly.

The EAPRO has not been effective in promoting voluntary treatment and rehabilitation.

Although the individuals within the EAPRO represent a relatively low risk for the reasons stated above, the EAPRO has not been successful in encouraging substance abusers to seek help (even without jeopardizing their access authorizations/jobs) as intended. This is evidenced by the low number of participants, the fact that most participants have been identified through arrests or investigations, and the fact that having been detected, they use the program to avoid or delay losing their access authorization. Thus, the potential exists that many more substance abusers who have yet to be detected through judicial/investigative processes are in DOE's work force, and this program is not effectively motivating them to reform.

The following issues raised in 1994 remain unresolved: 1) the legality and propriety of

circumventing 10 CFR 710, Subpart A, requirements by memorandum; 2) the practice of allowing alcohol abusers to perform PSAP duties without the appropriate diagnosis of remission and demonstrated period of sobriety indicated in 10 CFR 710, Subpart B; and 3) the related issues of increased liability. General Counsel has not provided the requested legal opinions; NN-51 has not modified program guidance; and although actual field practices have in some cases been modified somewhat regarding concurrent performance of PSAP duties, that issue also remains unresolved.

Neither Headquarters nor field management has consistently monitored EAPRO performance.

Normal provisions for program administration—such as those for monitoring, reviewing, or evaluating program adequacy, performance, or status—are absent from EAPRO program guidance. Consequently, NN-51 has not kept informed of specific aspects of program status since the program's inception. The policy review currently under way to determine whether current guidance requires revision does not appear to be collecting the type of information that would be expected to reveal implementation inadequacies that should be addressed through revised guidance.

Concerns remain regarding security risks—as well as possible safety risks—when persons performing sensitive duties are concurrently participating in the EAPRO.

Implementation of the program across the Department contains many inconsistencies. Particularly significant among these is the differing treatment of personnel performing sensitive duties, particularly those in PSAP or carrying firearms. While no known EAPRO cases have been identified to involve personnel performing PAP duties, performance of PSAP duties and the carrying of firearms are almost universally allowed to occur concurrent with some stage of EAPRO participation. This practice indicates a failure to acknowledge that PSAP duties and carrying firearms are not solely security-related, but also have significant safety (including nuclear safety) implications.

Opportunities for Improvement

The following suggestions are offered as actions that can materially enhance the usefulness of the EAPRO as a program directly affecting security and safety concerns. They are not prescriptive, and decisions regarding their implementation reside with responsible line and program managers.

- 1. **Resolve legal questions.** General Counsel should issue opinions in response to the specific questions submitted in the December 20, 1994, memorandum from EH-4 (now EH-21). Legal opinions/interpretations regarding those questions are necessary to inform senior managers as to whether the EAPRO program and some current program practices are consistent with regulations the Department is obligated to enforce, and to provide them with a clear understanding of potential liabilities associated with the program.
- 2. Ensure compliance with current provisions. All Departmental elements implementing EAPRO should comply strictly with the program guidance, particularly in determining program eligibility.
- 3. **Expand scope of ongoing policy review.** NN-51 should consider expanding its policy review of the EAPRO program to determine: the adequacy of program guidance; the program

management features needed to effectively monitor the program; the level of compliance of actual program practices with current guidance and program intentions; and whether, based on program cost, size, and success in meeting program goals, the program should be continued.

- 4. **Establish needed controls.** NN-51 should consider aspects of the program that need to be formalized or enhanced. Specific areas that need to be addressed include:
 - Initiate program management controls to allow ongoing monitoring of program status, analysis of program performance, and compliance with program requirements.
 - Formalize current field practices by amending program criteria to exclude participation by drug abusers.
 - · Consider prohibiting individuals from performing PAP or PSAP duties or carrying firearms on duty while participating in the EAPRO program. Alternatively, consider requiring a sobriety test (e.g., breath alcohol test) prior to each shift during which an EAPRO participant carries a firearm or performs PSAP duties.
 - When the Office of General Counsel provides the opinions requested regarding EAPRO issues, amend program guidance as (if) appropriate.

OFFICE OF OVERSIGHT SURVEY

SURVEY

The following survey is being conducted to gather baseline data in support of a special study concerning the possible security-related consequences of substance abuse policies and practices involving personnel performing sensitive duties (PAP, PSAP, firearms, etc.). The majority of the survey questions involve various aspects of the Employee Assistance Program Referral Option (EAPRO) Program at your organization.

Some organizations have EAPRO-like programs, but call them something else (e.g., SARPO, SAPRO, etc.). This survey applies to all programs that provide an option for employees with substance abuse problems to keep active clearances and continue to perform duties while undergoing treatment.

The survey includes two parts, and asks for information of a statistical nature and information concerning certain policies and practices.

It is anticipated that most, if not all, questions can be answered by the Personnel Security organization. Consequently, we request a quick turnaround. If the survey is completed in a comprehensive and timely manner, site visits and other more intrusive data collection activities can be minimized. For many organizations, it is anticipated that site visits will not be required, although some followup by telephone may be required.

INSTRUCTIONS FOR COMPLETING SURVEY

1. Please complete and fax this survey to (301) 903-4120, by January 24, 1997.

- 2. If you have any questions about completing the survey, please call Virginia Johnson at (301) 903-4809 or Marvin Mielke at (301) 903-7362.
- 3. The information requested is for all personnel (Federal and contractor employees) whose access authorizations your organization administers. However, if your organization is responsible for multiple major sites, and it is feasible (or easier) to report statistical data by site, please do so by copying Part B of the survey and completing it for each site. Indicate on each Part B submitted, on the Site line, who the reported data covers (e.g., all personnel administered by your organization, or just those at a specific site, naming the site). The total of all Part Bs you submit should cover all personnel whose access authorizations you administer. You need submit only one Part A, covering your entire organization.
- 4. If you wish to include additional explanation or information for an answer, please attach additional sheets, referencing the part (A/B) and question number. For example, many of the questions have a simple yes/no answer as the response option. In practice, these questions may not be amenable to simple yes/no answers. In such cases please provide detail on your policies that govern the situation (e.g., there may be criteria used to determine whether EAPRO can be offered to persons in PAP). Copies of relevant policies would be appreciated.
- 5. Questions asking for information for particular years refer to calendar years.

Office of Oversight Survey

DA	\mathbf{DT}	A
PA	KI	Α

ORGANIZATION:		
POC:	PHONE:	FAX:

1.	what is the date your organization implemented the EAPRO?
2.	Do you offer EAPRO participation to access authorization candidates? Yes No
3.	Since the EAPRO was created in July 1993, what EAPRO-related guidance have you received from the Office of Security Affairs?
4.	Since the EAPRO was created in July 1993, has the Office of Security Affairs conducted an EAPRO-related review at your organization? Yes No If yes, when?
5.	Are statistics regarding the EAPRO program reported to anyone up or down your organization's chain of management? Yes No If yes, how often and to whom?
6.	When determining whether to offer EAPRO to an individual, is any special consideration given to personnel in the following categories?
	PAP participants: treated same special consideration Explain:
	PSAP participants: treated same special consideration Explain:
	Armed (SPO): treated same special consideration Explain:
7.	Is it your organization's policy/practice to offer EAPRO to qualified personnel who also perform PAP, PSAP, or armed duties? Yes No
	If so, are they allowed to continue these special duties while in EAPRO? Yes No
8.	If a cleared individual is identified as having a substance abuse problem (drug or alcohol), is his/her supervisor notified of such? Yes No
9.	If a cleared individual is identified as having a substance abuse problem (drug or alcohol), is contractor medical notified? Yes No
10.	If an individual enters EAPRO, is his/her supervisor notified of such? Yes No
11.	If a person enters the EAPRO program, is contractor medical notified? Yes No
12.	When a person enters the EAPRO program, who (organization or position title, fed/contractor, up/down management chain) is notified of that fact?

13.	If a person entering EAPRO is in one of the following categories, are additional organizations/persons notified?				
	PAP participants	s: Yes No W	/ho?		
	PSAP participan	nts: Yes No V	Who?		
	Armed (SPO): Y	Yes No Who	?		-
<u>Additi</u>	onal Part A Com	ments			
		Office of	f Oversight S	urvey	
			PART B		
ORGA	ANIZATION:		SITE:_		
POC:		PHO	ONE:	FAX:	
1. Number (at year-end) of "L" access authorizations during:					
	1994:	1995:	Currently:		
2.	Number (at year	end) of "Q" acces	s authorizations duri	ng:	
	1994:	1995:	Currently:		
3.	Number of PAP	participants at end	of:		
	1994:	1995:	Currently:		
4.	Number of PSA	P participants at er	nd of:		
	1994:	1995:	Currently:		

5. Number of armed personnel (SPO) at end of:			nd of:			
	1994:	1995: _		Currently:		
6.	Number of cl	leared personne	l interview	ed for alcohol-related issues during:		
	1994:	1995: _		1996:		
7.	Number of cl	leared personne	l interview	ed for drug-related issues during:		
8.				1996:ed for psychiatric/psychological evaluation during:		
	1994:	1995: _		1996:		
9.		-		For psychiatric/psychological evaluation during: 1994 96:		
10.				ed by granting or continuing an access authorization 1996:		
11.	Number of drug-related cases resolved by granting or continuing an access authorization during: 1994: 1995: 1996:					
12.	Number of al	Number of alcohol-related cases processed through Administrative Review during:				
	1994:	1995: _		1996:		
13.	Number of drug-related cases processed through Administrative Review during:					
	1994:	1995: _		1996:		
14.	Number of alcohol abusers entering the EAPRO program. How many of these individuals self-identified as opposed to information being reported from other sources.					
	1994:	_ 1995:	_ 1996:	Total currently in EAPRO:		
15.		_	-	APRO program. How many of these individuals self- ing reported from other sources		
	1994:	_ 1995:	_ 1996:	Total currently in EAPRO:		
16.	Number of personnel currently in EAPRO program and performing PAP duties?					
	Total:	_ Of these, # o	of alcohol c	ases:; # of drug cases:		

17. Number of personnel currently in EAPRO and performing PSAP duties?		
	Total:; # of drug cases:;	
18.	Number of personnel currently in EAPRO and carrying firearms on duty (SPO)?	
	Total:; # of drug cases:;	
19.	Since the inception of the EAPRO, how many personnel have been disenrolled from the EAPRO program due to any reason (relapse, failure to attend treatment, etc.)?	
	How many of these were also performing the following duties at time of the event (or other cause) that lead to disenrollment?	
	PAP: PSAP: Armed (SPO):	
20.	Since the inception of the EAPRO, how many EAPRO participants were involved in security-related incidents or incidents of security concern?	
	How many of these were also performing the following duties at the time of the incident/concern? PAP: PSAP: Armed (SPO):	
21.	Since the inception of the EAPRO, how many EAPRO participants have been involved in safety or environmental accidents/incidents?	
	How many of these were also performing the following duties at the time of the accident/incident? PAP: PSAP: Armed (SPO):	
<u>Addit</u>	ional Part B Comments	

INFORMATION SOURCES

Headquarters Organizations

Human Resources and Administration (HR-54)
Office of General Counsel (GC-80)
Office of Security Affairs (NN-50)
Office of Safeguards and Security (NN-51)

Field Organizations

Albuquerque Operations Office Chicago Operations Office Idaho Operations Office Nevada Operations Office Oak Ridge Operations Office Richland Operations Office Rocky Flats Field Office Oakland Operations Office Savannah River Operations Office

Other

Oak Ridge Institute for Science and Education